STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 25, 2011
v	No. 301608 Saginaw Circuit Court
DYTERIUS MICHAEL ROBY, Defendant-Appellant.	LC No. 09-032607-FC

Before: M. J. KELLY, P.J., and FITZGERALD and WHITBECK, JJ.

PER CURIAM.

Defendant Dyterius Roby appeals as of right his jury conviction of two counts of carrying a firearm during commission of a felony (felony firearm),[1] assault with intent to murder,[2] carrying a dangerous weapon with unlawful intent,[3] and felon in possession of a firearm.[4] The trial court sentenced Roby, as a fourth-offense habitual offender,[5] to concurrent sentences of 2 years each for the felony firearm counts, consecutive to life imprisonment for the remaining convictions. We affirm.

I. FACTS

This case arises out of a shooting incident that occurred on the morning of April 24, 2009. Cornelius Owens testified that at approximately 10:15 a.m. that morning, he was walking his dog into his backyard after visiting with his neighbors. As he entered the backyard, he encountered Roby, who began shooting at him. Owens ran out of the yard and across the street as Roby gave chase and continued to shoot at him. Roby's gun then became jammed, which gave Owens a chance to hide behind a garage. Having apparently lost track of Owens, Roby

[1] MCL 750.227b.

[2] MCL 750.83.

[3] MCL 750.226.

[4] MCL 750.224f.

[5] MCL 769.12.

then left the scene. Owens suffered several gunshot wounds, for which he was treated at the hospital. The shooting was allegedly in retaliation for a recent altercation that had occurred between Owens and two other men from the neighborhood.

Owens's testimony was corroborated by eye witness Maurice Harris, who testified that he saw Roby chasing and shooting at Owens. Further, Detective Jason Ball, who the trial court qualified as an expert in forensic analysis of cellular data, testified that a cellular phone believed to be in Roby's possession on the morning of April 24th was tracked as having been in the vicinity of the shooting between approximately 9:30 and 10:30 a.m.

Roby testified in his own defense and denied any involvement in the shooting. He testified that he was asleep at his girlfriend's house until approximately 10:40-11:00 a.m. Roby also testified that the cellular phone that was introduced into evidence as allegedly belonging to him actually belonged to his brother. And although Roby admitted that he sometimes used his brother's phone, he denied he had possession of it on the day of the shooting. However, Roby's girlfriend contradicted his testimony, testifying that he had that phone with him when she saw him on the afternoon of April 24, 2009.

As stated above, the jury convicted Roby on several charges stemming from the shooting, and he now appeals those convictions.

II. EXPERT TESTIMONY

A. STANDARD OF REVIEW

Roby argues that the trial court erred when it allowed Jason Ball to testify as an unqualified expert contrary to MRE 702 because his testimony was not supported by the necessary underlying data. A trial court's qualification of a witness as an expert and admission of his testimony are in the trial court's discretion and we will not reverse on appeal absent an abuse of that discretion.[6] A trial court abuses its discretion if its decision results in an outcome that falls outside the range of principled outcomes.[7] However, a trial court's error in the admission or exclusion of evidence will not warrant reversal unless refusal to do so appears inconsistent with substantial justice or affects a substantial right of the opposing party.[8]

B. LEGAL STANDARDS

If the trial court determines that recognized scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert may testify to the knowledge by opinion or otherwise, if the testimony is based on sufficient facts and is the product of reliable principles and methods, and

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[6] *People v Steele*, 283 Mich App 472, 480; 769 NW2d 256 (2009).

[7] *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006).

[8] *People v Dobek*, 274 Mich App 58, 93; 732 NW2d 546 (2007).

the witness has applied the principles and methods reliably to the facts of the case.[9] The admission of expert testimony requires that: (1) the witness be an expert; (2) there are facts in evidence that require or are subject to examination and analysis by a competent expert; and (3) the knowledge is in a particular area that belongs more to an expert than to the common man.[10] In addition, the testimony must be reliable, including the data underlying the expert's theories and the methodology by which the expert draws his conclusions.[11] A witness may be qualified as an expert on the basis of knowledge, skill, experience, training or education.[12] And this qualifications requirement is to be broadly applied.[13]

C. UNDERLYING TESTIMONY

During trial, defense counsel requested a separate record in order to question Saginaw City Police Department Detective Jason Ball regarding his expertise in forensic analysis of cellular data. Detective Ball testified that he had received special training relating to forensic analysis of cellular data. He explained that, although he had no formal certification, in October 2007, he took a two-day training class on the subject. Detective Ball claimed that at that time, that class was the only training available for forensic data analysis of cellular phones. He further explained that during that training he learned about the history of cell phones and cellular service systems, how to retrieve and analyze data that is stored by cell phone companies, and how to track cell phones to pinpoint locations at the time of usage. Detective Bell stated that, since that training, he had worked on numerous cases in which he was asked to analyze data to determine "where a particular cell phone was at the time that certain calls were made[.]" And in one homicide case, he testified at trial regarding the location of several cell phones at the time of the murder, which led to several convictions.

Detective Ball then testified regarding the process of his data analysis. According to Detective Bell, he first looks at the phone records provided by the servicing company, in this case Sprint Nextel. Each company's records are different, but, based on his training, he is able to decipher when certain calls were sent or received, and when each call ended. Based on those records he then looks at global positioning system (GPS) coordinates to locate the specific tower(s) through which the call was sent. Detective Ball also testified that, although he was not an engineer, he was capable of testifying to signal strength of towers in order to determine which tower a call would most likely "hit[] off" at any particular location.

Defense counsel objected to Detective Ball being qualified as an expert, taking issue with that fact that Detective Ball could not determine what tower a call hit off of without looking at

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[9] MRE 702; *Dobek*, 274 Mich App at 93-94.

[10] *People v Beckley*, 161 Mich App 120, 125; 409 NW2d 759 (1987), aff'd 434 Mich 691 (1990).

[11] *People v Yost*, 278 Mich App 341, 394; 749 NW2d 753 (2008).

[12] MRE 702; *Yost*, 278 Mich App at 393.

[13] *People v Moye*, 194 Mich App 373, 378; 487 NW2d 777, rev'd on other grounds 441 Mich 864 (1992).

other records that were not admitted into evidence. However, after noting the objection, the trial court allowed Detective Ball to testify.

After explaining his qualifications and process to the jury, Detective Ball testified that, as part of the investigation in this case, he was asked to determine where Roby's cell phone was at the time of the shooting. Based on his assessment of the data, he concluded that the cell phone was in the area of the shooting at the time of the incident on April 24, 2009. Specifically, Detective Ball testified that the phone was used 12 times between 9:41 a.m. and 10:28 a.m. in the vicinity of shooting. According to Detective Ball, at or around 10:30 a.m., the phone then started moving away from the area of the shooting. Detective Ball also testified that several of the calls were made to and from a phone number belonging to one of the men with whom Owens had the preceding altercation. On rebuttal, Detective Ball further testified that he was able to track Roby's phone as being in the areas where his girlfriend testified they went on the afternoon of April 24th.

D. ANALYSIS

Roby argues that the trial court erred in allowing Detective Ball to testify as an expert in cell phone data analysis because he was "severely lacking in qualifications." Specifically, Roby takes issue with that facts that Detective Ball's training consisted of only one two-day training course, he was not an engineer qualified to testify in depth about tower signal strength, and it was necessary for Detective Ball to look at records other than the cell phone records themselves to determine the location of the subject tower(s). But we find Roby's objections without merit. Detective Ball testified that the training he received was the only training available at the time and that he had used that training in numerous other cases, including one in which his testimony aided in the conviction of several murderers. Moreover, he explained in detail his process of analyzing the cell phone records and then cross-referencing them with relevant GPS data to pinpoint the tower through which a particular cell phone call was transferred. We therefore conclude that the trial court did not abuse its discretion in qualifying Detective Ball as an expert and allowing him to testify regarding the location of Roby's cell phone at the time of the shooting.

III. INEFFECTIVE ASSISTANCE OF COUNSEL

A. STANDARD OF REVIEW

Roby argues that defense counsel was constitutionally ineffective for failing to request a stipulation that Roby was ineligible to possess a firearm and not objecting to testimony about his parole and prior prison status. Because it is unpreserved, we will consider Roby's claim only to the extent that defense counsel's claimed mistakes are apparent on the record.[14]

[14] *People v Jordan*, 275 Mich App 659, 667; 739 NW2d 706 (2007).

B. LEGAL STANDARDS

A criminal defendant has the fundamental right to effective assistance of counsel.[15] To prove that his defense counsel was not effective, a defendant bears the burden to show that (1) defense counsel's performance was so deficient that it fell below an objective standard of reasonableness under prevailing professional norms, and (2) there is a reasonable probability that defense counsel's deficient performance so prejudiced the defendant that it deprived him of a fair trial; that is, but for defense counsel's errors, the result of the proceeding would have been different.[16] In proving these elements, the defendant must overcome a strong presumption that defense counsel's performance constituted sound trial strategy.[17] This Court evaluates defense counsel's performance from counsel's perspective at the time of the alleged error and in light of the circumstances.[18] Defense counsel's words and actions at trial are the most accurate evidence of what his strategies and theories were at trial.[19] This Court may not second-guess defense counsel regarding matters of trial strategy, and even if defense counsel was ultimately mistaken, this Court will not assess counsel's competence with the benefit of hindsight.[20]

C. UNDERLYING TESTIMONY

Before trial, the prosecutor noted that Roby was charged with being a felon in possession of a firearm and asked whether defense counsel was willing to stipulate to the underlying felonies. If not, the prosecutor added, then he would call Roby's parole agent, Joe Wilson, to testify. Defense counsel chose to allow Wilson's testimony. Wilson later testified that Roby was on parole after being released from prison in November 2008 for convictions on four felonies: delivery and manufacture of marijuana, unarmed robbery, conspiracy to deliver cocaine less than 50 grams, and delivery of cocaine less than 50 grams. Wilson also testified that, as a previously convicted felon on parole, Roby was prohibited from possessing or carrying a firearm.

D. ANALYSIS

Roby argues that defense counsel's failure to stipulate to the underlying felonies was ineffective because it opened the door for the jury to hear that he was on parole for four prior felonies involving drugs and unarmed robbery. Roby argues that this testimony was clearly

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[15] US Const, Am VI; Const 1963, art 1, § 20; *United States v Cronic*, 466 US 648, 654; 104 S Ct 2039; 80 L Ed 2d 657 (1984).

[16] *Strickland v Washington*, 466 US 668, 694; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994).

[17] *People v Riley*, 468 Mich 135, 140; 659 NW2d 611 (2003); *People v Rice* (*After Remand*), 235 Mich App 429, 445; 597 NW2d 843 (1999).

[18] *Strickland*, 466 US at 689.

[19] *People v Grant*, 470 Mich 477, 487; 684 NW2d 686 (2004).

[20] *Rice*, 235 Mich App at 445.

prejudicial. However, based on our review of the record, we cannot conclude that defense counsel was ineffective for allowing the testimony. Because a stipulation could have left the jury wondering whether Roby had actually been convicted of more serious, violent offenses, the decision to not stipulate was a valid trial tactic.

IV. ADMISSION OF EVIDENCE

A. STANDARD OF REVIEW

Roby argues that the trial court erred by permitting the prosecutor to introduce evidence of third-party threats against Harris where the prosecutor failed to establish that Roby had anything to do with the threats. The decision whether to admit evidence is within the trial court's discretion, and we will not disturb that decision absent an abuse of that discretion.[21]

B. LEGAL STANDARDS

Generally, all relevant evidence is admissible and irrelevant evidence is not.[22] The credibility of witnesses is always a material issue, and evidence that shows bias or prejudice of a witness is always relevant.[23]

C. UNDERLYING TESTIMONY

During his testimony, the prosecution asked Harris whether he or anyone tried to help Owens while Roby was shooting at him. The following exchange then followed:

> *A.* I mean, to be honest with you, it wasn't anybody business. You know what I'm saying? He wasn't shooting at nobody but that man, you know what I'm saying? Like, I wouldn't even be here now if I would have got in the way. It ain't my business, you know what I'm saying? If he wanted to shoot at us he could have shot at us too. But he didn't. You know what I'm saying? So I guess that was some personal sh—.
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> *Q.* So you got no disagreement or—with D.T.?
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> *A.* I mean—no, I ain't never have no disagreement with him. I didn't even want to be here today. But the dude that threatening me is on this case so—you know what I'm saying?
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> *Q.* So you feel like you don't have any choice?

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[21] *People v McDaniel*, 469 Mich 409, 412; 670 NW2d 659 (2003).

[22] MRE 402; *People v Starr*, 457 Mich 490, 497; 577 NW2d 673 (1998).

[23] *People v McGhee*, 268 Mich App 600, 637; 709 NW2d 595 (2005).

A. I don't, really. If they pay that man to shoot somebody they pay them to shoot me.

[Defense counsel]: Objection.

The Court: Sustained. Just answer the question, sir. Listen to the question and answer it.

Harris then explained that he was reluctant at first to talk to the police. But he changed his mind after finding out that threats were being made against him and his brother. (When Harris mentioned the threats against his brother, defense counsel objected, but the trial court allowed the questioning to continue.) Harris stated that up until that point he felt like the shooting incident was none of his business, but the threats prompted him to step up and testify because he did not feel safe anymore. Although Harris did not at first reveal exactly who was threatening him, later in his testimony he revealed that one of the men with whom Owens had the original altercation was the person who was threatening him: "Ain't nobody else threaten me—it was Steve, you know what I'm saying?"

D. ANALYSIS

Roby argues that Harris's testimony was unfairly prejudicial because his testimony was unclear regarding who exactly was threatening him and whether that person actually had any connection to Roby. We disagree. The threats against Harris served as his explanation for why he was testifying in this case, and his motivation for testifying clearly affected his credibility. It was the jury's duty as fact-finder to assess the credibility of his testimony,[24] and the trial court did not abuse its discretion in allowing it to do so.

V. ROBY'S STANDARD 4 BRIEF

Roby raises several additional issues in a pro se supplemental brief that he filed pursuant to Supreme Court Administrative Order No. 2004-6, Standard 4, none of which have merit.

A. DETECTIVE GEROW'S TESTIMONY

Roby argues that the trial court erred in denying his motion for mistrial when Saginaw City Police Department Detective Matt Gerow injected unsubstantiated hearsay and speculation that Roby was hired to kill Owens. This Court reviews for an abuse of discretion a trial court's decision to deny a motion for a mistrial.[25] "A mistrial is warranted only when an error or

[24] See *People v Fletcher*, 260 Mich App 531, 561; 679 NW2d 127 (2004).

[25] *People v Dennis*, 464 Mich 567, 628 NW2d 502 (2001).

irregularity in the proceedings prejudices the defendant and impairs his ability to get a fair trial."[26]

On the first day of trial, defense counsel moved to exclude any testimony regarding the theory that Roby was hired to kill Owens in retaliation for the earlier altercation. Defense counsel argued that any such testimony would be inadmissible hearsay. The trial court ruled that it would allow testimony that Roby was associated with the men who Owens had the confrontation with. However, the trial court cautioned, "But unless you have a specific witness to say they wished to have him dead or ordered a contract or words to that effect, I will sustain the objection. . . . Otherwise it's just collective hearsay."

On the third day of trial, during the prosecutor's direct examination, he asked Detective Gerow why he helped Maurice Harris secure an early release from jail, to which Detective Gerow responded, "Because this guy called me, he's a witness to a murder—*possible murder for hire*."[27] Defense counsel immediately objected and requested a bench conference. After further questioning, defense counsel then moved for a mistrial, explaining his position as follows:

> During direct examination, Detective Gerow blurted out about trying to protect somebody that may be involved in a murder for hire case. He's been present during our discussions in court. He's an intelligent guy. I'd suggest he knew exactly what he was doing by blurting it out. It certainly violated very clear orders, pretrial and motion in limine, that I raised that the Court's previously ruled on. I move for a mistrial based on that statement.

The trial court denied the motion but stated that the motion was "noted."

Roby argues that the murder-for-hire testimony was irrelevant and prejudicial because he was not on trial for attempted murder for hire.[28] Roby points out that where a trial court denies a defendant's motion for mistrial raised on the basis of a police officer's response to questioning, this Court must "scrutinize" that response "to make sure the officer has not ventured into forbidden areas which may prejudice the defense."[29] "Police witnesses have a special obligation not to venture into such forbidden areas."[30] Therefore, Roby argues that a new trial is warranted given the highly prejudicial nature of Detective Gerow's forbidden testimony.

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[26] *People v Waclawski*, 286 Mich App 634, 707; 780 NW2d 321 (2009) (quotation marks and citation omitted).

[27] Emphasis added.

[28] *People v Holly*, 129 Mich App 405, 416; 341 NW2d 823 (1983) ("Inadmissible evidence tying a defendant to other crimes is highly prejudicial.").

[29] *Id.* at 415.

[30] *Id.* at 415-416.

Detective Gerow's response was clearly forbidden, and he was aware of this fact, having been present in the courtroom during the trial court's original ruling prohibiting hearsay testimony regarding the murder-for-hire theory. Like the officer in *People v Holly*, "[b]eing a police [detective] and the officer in charge of the case, he should have known better than to volunteer such information."[31] However, we nevertheless conclude that the trial court did not abuse its discretion in denying the motion for mistrial where the other evidence against Roby was so strong.[32] Both Harris and Owens had already testified that the shooting was believed to be in retaliation for a prior altercation with other men in the neighborhood. Both Harris and Owens also testified unequivocally that Roby was the shooter. And the phone data evidence, which Roby's own girlfriend corroborated, showed that Roby was in the area at the time of the shooting, communicating with one of the men from the earlier altercation. In light of this evidence, it is not reasonably likely that, had the trial been free of the error, the jury would have voted to acquit Roby.[33]

B. PHOTOGRAPHIC EVIDENCE

Roby argues that the trial court committed clear error when it admitted irrelevant and prejudicial photographic evidence. The decision whether to admit evidence is within the trial court's discretion, and we will not disturb that decision absent an abuse of that discretion.[34]

On the third day of trial, the prosecutor sought to introduce several photos into evidence, depicting $67,000 hidden in an air vent in the home of the one of the men with whom Owens had his prior altercation. This money was seized by the police during the execution of a search warrant looking for drug trafficking evidence. The prosecutor's theory was that the men with whom Owens had the altercation were upset about losing that money, and they believed that Owens was the one who "ratted them out" to the police. Defense counsel objected to introduction of the photographs on the ground that they were not relevant to the charges against Roby because it was not his home that was searched or his money that was taken. The trial court disregarded the objection and allowed admission of the photos.

Roby argues that the photos were irrelevant and prejudicial because there was no evidence that the loss of the money was in any way related to the shooting and the evidence served only to confuse the jury. However, even assuming that the trial court erred in admitting the photos, there is "no reasonable possibility that the evidence complained of might have contributed to the conviction."[35] As we stated previously, ample untainted evidence connected

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[31] *Id.* at 416.

[32] See *id.*

[33] See *id.*

[34] *People v McDaniel*, 469 Mich 409, 412; 670 NW2d 659 (2003).

[35] *People v Anderson* (*After Remand*), 446 Mich 392, 406; 521 NW2d 538 (1994) (quotation marks and citations omitted).

Roby to the shooting. Therefore, the admission of the photographs was harmless beyond a reasonable doubt.

C. BUSINESS RECORDS

Roby argues that the trial court clearly erred when it admitted certain business records in violation of MRE 902(11). The decision whether to admit evidence is within the trial court's discretion, and we will not disturb that decision absent an abuse of that discretion.[36] However, whether a rule of evidence precludes admission of certain evidence is a matter of law that this Court reviews de novo.[37]

On the third day of trial, the prosecution sought to introduce phone records from both Roby and the men who were in involved in the earlier altercation with Owens. Defense counsel objected on the ground that a proper foundation had not been laid for their admission. The prosecutor responded that the records were properly authenticated by way of a signed certification from the custodian of the records. Defense counsel countered that under MRE 902 the prosecutor was also required to provide written notice of his intent to present the records using that certification method. The trial court expressed uncertainty regarding the notice requirement ("We'll have it straightened out some day regarding the written notice"), but nevertheless admitted the records into evidence over the objection.

MRE 902(11) provides:

> Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:
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> * * *
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> (11) *Certified records of regularly conducted activity.* The original or a duplicate of a record, whether domestic or foreign, of regularly conducted business activity that would be admissible under rule 803(6),[38] if accompanied by a written declaration under oath by its custodian or other qualified person certifying that

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[36] *McDaniel*, 469 Mich at 412.

[37] *People v Martin*, 271 Mich App 280, 315; 721 NW2d 815 (2006).

[38] MRE 803(6) provides:

> *Records of regularly conducted activity.* A memorandum, report, record, or data compilation, in any form, of acts, transactions, occurrences, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by

(A) The record was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;

(B) The record was kept in the course of the regularly conducted business activity; and

(C) It was the regular practice of the business activity to make the record.

A party intending to offer a record into evidence under this paragraph must provide written notice of that intention to all adverse parties, and must make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them.

Roby argues that the prosecutor's failure to provide written notice to the defense of his intent to introduce the phone records using the certification method was in violation of MRE 902 and that the trial court clearly abused its discretion in allowing admission of the evidence in contravention that notice requirement.

The prosecutor erred by not following the proper procedure by providing notice as MRE 902 requires. However, evidentiary error does not require reversal unless, after an examination of the entire cause, it appears more probable than not that the error affected the outcome of the trial in light of the weight of the properly admitted evidence.[39] And in this case, we conclude that Roby has not met this threshold for reversal. As we have stated previously, there was ample evidence admitted to support Roby's conviction and it does not appear more probable than not that the error affected the outcome of the trial in light of the weight of the properly admitted evidence.

D. JURY INSTRUCTIONS

Roby argues that the trial court committed clear error when it instructed the jury with regard to flight in the absence of any supporting evidence. This Court reviews a claim of instructional error involving a question of law de novo, but this Court reviews the trial court's determination that a jury instruction applies to the facts of the case for an abuse of discretion.[40]

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certification that complies with a rule promulgated by the supreme court or a statute permitting certification, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

[39] MCL 769.26; MCR 2.613(A); *People v Whittaker*, 465 Mich 422, 426-427; 635 NW2d 687 (2001).

[40] *People v Dupree*, 486 Mich 693, 702; 788 NW2d 399 (2010).

"The defendant bears the burden of establishing that the asserted instructional error resulted in a miscarriage of justice."[41]

Before the trial court read the jury instructions, defense counsel objected, arguing that Roby did not flee. In fact, counsel argued, Roby reported to his parole officer as regularly scheduled and was then arrested at that time. The trial court denied the objection, explaining, "I'm going to give it. Whoever shot the man ran and the question is whether this gentleman did or not. He obviously didn't stick around and make a self-defense claim, whoever it was." Accordingly, during its reading of the jury instructions, the trial court instructed the jury as follows:

> There has been some evidence that the defendant ran away from the alleged crime. This evidence does not prove guilt. A person may run or hide for innocent reasons such as panic, mistake, or fear. However, a person may also run or hide because of a consciousness of guilt. You must decide if the evidence is true and, if true, whether the defendant had a guilty state of mind.

Roby argues that the flight instruction was improper because there was no evidence that he left the scene for fear of apprehension. According to Roby, "the evidence reveals that the shooter lost track of his victim and simply left the scene." Roby therefore argues that he is entitled to a new trial because this Court has stated that "mere departure from the scene is insufficient to give rise to 'flight' in the legal sense[.]"[42]

We agree that the evidence did not support that Roby fled the scene for fear of apprehension. The evidence showed that he likely left the scene because he simply lost track of Owens. However, we conclude that the trial court did not abuse its discretion in reading the instruction because the instruction adequately protected Roby's rights by clarifying that, although flight could indicate consciousness of guilt, Roby also could have fled for an innocent reason, such as panic, mistake, or fear.[43] As the trial court instructed, it was for the jury to determine why Roby left the scene and whether it evidenced a guilty mind.[44]

E. CUMULATIVE EFFECT OF ERRORS

Roby argues that, even if no single error would warrant reversal, the cumulative effect of his claimed errors requires that he receive a new trial. This Court reviews a claim of cumulative error to determine whether the combination of errors denied defendant a fair trial.[45] "The

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[41] *Id.*, citing MCL 769.26.

[42] *People v Hall*, 174 Mich App 686, 691; 436 NW2d 446 (1989).

[43] See CJI2d 4.4.

[44] *People v Taylor*, 195 Mich App 57, 63; 489 NW2d 99 (1992) ("Flight can result from factors other than guilt, and it is for the jury to determine what caused defendant to flee.").

[45] *People v Knapp*, 244 Mich App 361, 387; 624 NW2d 227 (2001).

cumulative effect of several minor errors may warrant reversal even where individual errors in the case would not warrant reversal."[46] But we will not reverse unless the errors are consequential and denied the defendant a fair trial.[47] Because we conclude that no errors of consequence occurred at Roby's trial, we reject his argument that he is entitled to relief under a cumulative error theory.

We affirm.

/s/ Michael J. Kelly
/s/ E. Thomas Fitzgerald
/s/ William C. Whitbeck

[46] *Id.* at 388.

[47] *Id.*